1667.

SUPREME COURT OF THE UNITED STATES.

No. 181.

CHARLES BALLANCE, PL'FF IN ERROR,

vs.

ADOLPH PAPIN, HENRY PAPIN, AND MARY ATCHISON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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GIDEON, print.

UNITED STATES OF AMERICA,
Northern district of Illinois.

Pleas in the Circuit Court of the United States for the northern district of Illinois, at the city of Chicago, in said district, commenced in the Circuit Court of the United States for the late district of Illinois, at Springfield, before the Hon. John McLean, one of the justices of the Supreme Court of the United States of America, presiding, and the Hon. Thomas Drummond, Judge of the District Court of the United States for said districts, associate, judges of said Circuit Court for said late district of Illinois, and also for said northern district of Illinois, on Friday, the twentieth day of July, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth year.

ADOLPH PAPIN, HENRY PAPIN and MARY ATCHISON, vs. ALEXANDER COOPER. } Ejectment.

Be it remembered, that heretofore, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and fifty-four, in the July term, A. D. 1854, of the circuit court of the United States for the district of Illinois, at Springfield, came into court the said plaintiffs by Manning & Merriman, their attorneys, who filed in open court the bond, declaration and notice, in said entitled cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State and district of Illinois.
Circuit Court, July term, A. D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria and State and district of Illinois, am held and firmly bound unto Alexander Cooper, or to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Cooper or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them jointly, severally and firmly, by these presents. Witness my hands and seal, the 7th day of July, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Adolph Papin, Henry Papin, and Mary Atchison, have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois against Alexander Cooper: Now, if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of

said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void; otherwise, of full force and effect.

A. L. MERRIMAN. [L. S.]

Endorsed: Filed this 7th day of July, A. D. 1854.

WM. POPE, *Clerk.*

UNITED STATES OF AMERICA,
District and State of Illinois.

In the Circuit Court of the United States, in and for the district and State of Illinois, of the July term, A. D. 1854.

Adolph Papin, Henry Papin, and Mary Atchison, plaintiffs in this suit, citizens of the State of Missouri, one of the United States of America, complain of Alexander Cooper, defendant in this suit, citizen and inhabitant of the State of Illinois, of a plea, wherefore he, the said defendant, with force and arms, &c., entered into the following described premises. For that heretofore, to wit, on the first day of June, A. D. 1854, said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, described as follows: A lot in the village of Peoria, in the State of Illinois, containing twenty-seven thousand four hundred and forty-nine square feet, and seven hundredths of a square foot, according to the survey approved the first day of September, 1840, by the surveyor of public lands in the State of Illinois and Missouri, covered by claim No. forty-two, confirmed to Felix Fontaine, in right of his wife, Josette Cassareau dit Fontaine, by an act of Congress approved 3rd March, 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, and situated in the county of Peoria and State of Illinois—the title to which they claim in fee; and the said plaintiffs being so possessed thereof, the said defendant, on the second day of June, A. D. 1854, entered into said premises and unlawfully withhold from the plaintiffs the possession thereof, to the damage of the said plaintiffs five hundred dollars, and therefore they bring suit, &c. Plaintiffs further aver, that they are citizens and inhabitants of the of Missouri, in the United States of America, and that said defendant is a citizen and inhabitant of the State of Illinois, in the United States of America; and plaintiffs further aver, that the afore described premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars.

MANNING & MERRIMAN,
Plaintiffs' attorneys.

To the above named Defendants:

Take notice, that on the first day of the next term of the circuit court of the United States, within and for the district and State of

Illinois, to be held at Springfield, in said State of Illinois, on the first Monday of July, A. D. 1854, or as soon thereafter as counsel can be heard, a declaration of which above is a copy, will be filed in said court, and that upon filing the same, a rule will be entered requiring you, such defendant, to appear to plead thereto within twenty days thereafter, and that if you fail so to appear and plead, a judgment by default will be entered against you, and the plaintiffs will recover possession of the premises described in said declaration.

Yours, &c.,

MANNING & MERRIMAN,

Dated June 24th, 1854. *Attys. for Plaintiffs.*

STATE OF ILLINOIS,
County of Peoria, ss:

Jacob Troger, being first duly sworn, deposes and says, that he served a declaration and notice, of which the foregoing are copies, on the above named Alexander Cooper, by delivering to him personally the same on the 28th day of June, A. D. 1854.

JACOB TROGER.

Subscribed and sworn to before me, this 29th day of June, A. D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Endorsed: Filed July 7th, 1854.

WM. POPE, *Cl'k.*

And on the same day, to wit, on the 7th day of July, A. D. 1854, in the record of the proceedings of said circuit court for said district of Illinois, in said entitled cause, is the following entry, to wit:

ADOLPH PAPIN, HENRY PAPIN and MARY ATCHISON, vs. ALEXANDER COOPER. } Ejectment.

This day came the plaintiffs by their attorneys, and filed their declaration in ejectment, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant: It is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 22nd day of December, A. D. 1854, the said defendant, by his attorney, filed in the office of the clerk of said circuit court for said district of Illinois, his plea, in the words and figures following, to wit:

In the Circuit Court of the United States, in and for the State of Illinois, of the December Term, A. D. 1854.

ADOLPH PAPIN et al.
vs.
ALEXANDER COOPER. } Ejectment.

Said defendant comes and defends the force and injury, when, &c., and says he is not guilty of the trespass and ejectment in said declaration mentioned, in manner and form as the same is therein charged and alleged against him; and of this he puts himself upon the country, &c.

C. BALLANCE.

Endorsed: Filed Dec. 22nd, 1854.

WM. POPE, *Clerk*.

And afterwards, to wit, on the 15th day of January, in the December term, A. D. 1854, of said circuit court for said district of Illinois, the Hon. Thomas Drummond, district judge, only presiding; in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ADOLPH PAPIN et al.
vs.
ALEXANDER COOPER. } Ejectment.

This day came the parties, by their attorneys, and issue being joined, by agreement, a jury is waived, and this cause is submitted to the court for trial. And it is further agreed, by and between the parties, that Charles Ballance be admitted as the defendant herein, in lieu of Alexander Cooper; and this cause having occupied the time of the court until the hour of adjournment, it is ordered that the further trial thereof be continued until 9 of the clock to-morrow morning.

And afterwards, to wit, on the 16th day of January, A. D. 1855, of said December term, A. D. 1854, of said circuit court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ADOLPH PAPIN et al.
vs.
CHARLES BALLANCE. } Ejectment.

This day came the parties, by their attorneys, and concluded the argument of this cause, and the court not being sufficiently advised in the premises, took time to consider.

And afterwards, to wit, on the 19th day of January, A. D. 1855, in said December term, A. D. 1854, of said circuit court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ADOLPH PAPIN, HENRY PAPIN and MARY ATCHISON, vs. CHARLES BALLANCE. } Ejectment.

This day came again the parties, by their attorneys, and the court being now sufficiently advised of and concerning the premises, finds the defendant guilty of unlawfully withholding from the possession of the said plaintiffs a part of the premises in the declaration described, to wit: A part of a lot in the village of Peoria, in the State of Illinois, containing twenty-seven thousand and four hundred and forty-nine square feet and seven-hundredths of a square foot, according to the survey approved the first day of September, 1840, by the surveyor of public lands in the State of Illinois and Missouri, covered by claim number forty two (42), confirmed to Felix Fontaine in right of his wife, Josette Cassareau dit Fontaine, by an act of Congress approved 3d March, 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, to wit, so much of said lot, number forty-two (42), as is within the boundaries of the southwesterly half of lot number seven (7), in block number thirty-four (34), in Bigelow and Underhill's addition to the city of Peoria.

And the court further finds, that, at the commencement of this suit, the plaintiffs were and still are the owners in fee simple of said described premises, and assesses their damages at one cent. Whereupon the defendant, in his own proper person, enters his motion for a new trial herein.

And afterwards, on the same day, to wit, the 19th day of January, A. D. 1855, as yet of said December term, A. D. 1854, of said circuit court, in the records of the proceedings thereof in said entitled cause is the following entry, to wit:

ADOLPH PAPIN, HENRY PAPIN and MARY ATCHISON, vs. CHARLES BALLANCE. } Ejectment.

This day came again the parties, by their attorneys, and the defendant's motion for a new trial herein having been argued: It is ordered by the court that said motion be overruled. It is therefore considered and adjudged by the court that the said plaintiffs recover of and from the said defendant the possession of the premises, according to the finding of the court. And it is further ordered, that the said plaintiffs recover of and from the said defendant his costs, damages and charges herein expended, amounting to the sum of dollars and cents, and that he have a writ of possession for said premises and an execution for costs.

And afterwards, to wit, on the 22d day of January, A. D. 1855, as yet of the December term, A. D. 1854, of said circuit court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ADOLPH PAPIN, HENRY PAPIN and MARY ATCHISON, vs. CHARLES BALLANCE. } Ejectment.

This day came the defendant in his own proper person, and moves the court to grant him a new trial herein under the statute in such case made and provided. And it appearing to the satisfaction of the court that all the damages and costs taxed in this cause have been paid, it is therefore considered and adjudged by the court that the judgment rendered herein on the 19th day of January, of this court, be vacated, set aside, and for nothing held, and that this cause be reinstated on the docket, and a new trial had herein.

And afterwards, to wit, on the 19th day of July, in July term, A. D. 1855, of said court, for said northern district of Illinois, at Chicago, the Hon. Thomas Drummond, district judge, only presiding, in the record of the proceedings of said court in said cause is the following entry, to wit:

ADOLPH PAPIN, HENRY PAPIN & MARY ATCHISON, vs. CHARLES BALLANCE. } Ejectment.

Now at this day came the parties, by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit: R. O. Old, Charles S. Boyd, Theodore Hubbard, B. F. Hays, A. J. Haviland, J. D. Pierce, Albert B. Clark, James Parker, James S. Taylor, M. S. Johnson, Asa Howe and George W. Prickett, who were duly elected, tried and sworn, and after hearing the evidence and arguments of counsel, the instructions of the court to the jury, at the instance of the jury, were postponed until to-morrow morning.

And on the next day, to wit, the 20th day of July, in said July term, A. D. 1855, of said court, the Hon. Thos. Drummond, district judge, only presiding, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

ADOLPH PAPIN, HENRY PAPIN, and MARY ATCHISON, vs. CHARLES BALLANCE. } Ejectment.

The jury yesterday empanneled in this cause this day returned into court, and now came again the parties, by their attorneys, and the jury, after receiving instructions from the court, retired to consider of their verdict, and, after a short absence, they returned into court with the following verdict, to wit: "We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiffs a part of the land and premises described in the plaintiffs' declaration—the description in the declaration being as follows: A lot in the village (now city) of Peoria, in the county of Peoria and State of Illinois, contain-

ing twenty-seven thousand four hundred and forty-nine square feet and seven-hundreths of a square foot, according to the survey approved the first day of September, 1840, by the surveyor of public lands in the State of Illinois and Missouri, covered by claim No. forty-two, confirmed to Felix Fontaine, in right of his wife Josette Cassareau dit Fontaine, by an act of Congress approved 3rd of March, 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois. And we find the said defendant guilty of unlawfully withholding from the possession of the plaintiffs, as aforesaid, so much of said described premises as is covered by the southwesterly half of lot seven (7) in block No. thirty-four, (34,) as laid out by Bigelow & Underhill in their addition to the town of Peoria. We find the estate established in the plaintiffs, on the trial, to be an estate in fee simple, and we assess the damages of the plaintiffs at the sum of one cent. It is, thereupon, considered by the court, that the plaintiffs have and recover against the said defendant possession of the said described premises, according to the force, form, and effect of their said recovery, and that they have a writ of possession therefor, and that they also have and recover of the said defendant their said damages of one cent, as aforesaid assessed, together with their costs and charges by them about their suit in this behalf expended, amounting to the sum of dollars and cents; and that they have execution therefor."

And on the same day, to wit, the 20th day of July, A. D. 1855, said defendant filed in said court, with the clerk thereof, his bill of exceptions in the above entitled cause, in the words and figures following, to wit:

ADOLPH PAPIN, HENRY PAPIN, MARY ATCHISON, vs. CHARLES BALLANCE. } Ejectment.—July term, 1855.

Be it remembered, that on the trial of the above entitled cause, the plaintiff to maintain the issue on their part give in evidence—

1st. An act of Congress approved 15th May, 1820, entitled "An act for the relief of the inhabitants of the village of Peoria in the State of Illinois."

2nd. An act of Congress approved the 3d of March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

3rd. They offered in evidence the report made by Edward Coles, register of the land office at Edwardsville, as the same is found in print in the 3rd volume of American State Papers, from pages 421 to 431 inclusive.

To the introduction of which in evidence defendant objected, because said printed volume is not made evidence by any law; but the court overruled said objection, and said report was given in evidence to the jury.

4th. A plat of lot 42 as survey by Brown, deputy surveyor, which is as follows:

[*For plat see original, page* 14.]

5th. A plat of the French village of Peoria, as surveyed by the same, which is as follows:

[*For plat see original, page* 15.]

6th. Deposition of Mrs. Migueron, which was as follows:

The deposition of Emilie Migueron, taken before me, Edw. W. Shands, commissioner, (appointed for that purpose,) on the 28th day of November, A. D. 1854, at the residence of said witness, about eighteen miles southwest of St. Louis city, in the county of St. Louis, and State of Missouri, to be read in evidence in a certain cause depending in the circuit court of the United States for the district of Illinois, holden at Springfield, wherein Adolphus Papin, Henry Papin and Mary Atchison are plaintiffs, and Alexander Cooper is defendant. The said Emilie Migueron being first carefully examined, cautioned, and sworn to tell the whole truth, doth depose and say, in answer to interrogatories to her propounded, in pursuance of annexed commission and interrogatories, as follows:

Interrogatory 1st. Are you acquainted with the parties to this suit? If yea, how long have you known them respectively?

Answer. I am not acquainted with the parties to this suit.

Interrogatory 2d. What is your age, residence, and occupation?

Answer. I will be fifty-four years old the 14th day of next month, December. I reside in Bon Homme township, county of St. Louis, State of Missouri. I am the wife of Louis Solomon Migueron, a farmer.

Interrogatory 3d. What was your place of nativity?

Answer. Peoria, Illinois.

Interrogatory 4th. If you state that you was born in the village of Peoria, in the State of Illinois, state how long you resided there, and when did you leave said village, and under what circumstances?

Answer. I resided in Peoria until I was about ten years old. I left Peoria in the time of the war between the United States and Great Britain and the Indians. I left Peoria at the time it was burnt, and was compelled, with others, to leave, on account of the destruction of the village by fire.

Interrogatory 5th. What was the names of your parents, and are they, or not, now living? And if you state that your parents are deceased, state when and where they died, or the last you saw of them.

Answer. My mother's maiden name was Marie Joseph—sometimes

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" 74.

called Josette, and sometimes Josephine Casereau. My father's name was Antoine Deschamps. My parents are both dead. My mother died in St. Louis city, about the year 1827. My father died about a year before my mother, at Mackinaw. I was not present when my father died, but I afterwards went to Mackinaw, and got my deceased father's clothes. The last time I saw my father was in the spring of the year he died. He died in the month of July. I last saw my mother in the fall of 1826. She died in the spring of the next year, at St. Louis.

Interrogatory 6th. How many husbands had your mother, and when?

Answer. She had three husbands. When my mother married my father, she was the widow Shorette. Antoine Deschamps, my father, was her second husband. They parted, and she afterwards married Felix Fontaine. Felix Fontaine was married to my mother by Thomas Forsyth, at Peoria, who was a justice of the peace. The ceremony was again performed, at St. Louis, by a Catholic priest.

Interrogatory 7th. Was, or not, your mother married to some persons subsequent to your father; and if so, to whom, when, and where?

Answer. I have already stated that my mother was the widow of one Shorette when my father married her; and her last husband was Felix Fontaine, whom she married at Peoria, before the war, and before I left the village of Peoria. She was again married, at St. Louis, to said Fontaine, by a Catholic priest, after the war.

Interrogatory 8th. Had you any brothers or sisters? If so, what were their names?

Answer. I never had either a brother or sister.

Interrogatory 9th. Were you ever married? If so, to whom and when, and is your husband now living?

Answer. I married Louis Solomon Migueron about thirty-nine years ago. My husband is now living.

Interrogatory 17th. Do you know any other matter or thing of benefit to either party to this suit? If so, state fully.

Answer. I know nothing further of benefit to either party to this suit.

her
EMILIE ⋈ MIGUERON.
mark.

Attest: E. W. SHANDS.

I, Edward W. Shands, of the city and county of St. Louis, State of Missouri, in virtue of the power in me vested by the annexed commission, dedimus potestatem, do certify, that in pursuance of the said commission to me addressed, I caused the above Emilie Migueron, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, the same being a time and place appointed by me for the purpose of taking her deposition; that the said witness was then and there by me carefully examined, cautioned, and sworn to testify the whole truth. And thereupon, I proceeded to examine her upon the annexed interrogatories, reducing said interrogatories and the

answers of the deponent thereto to writing, in the presence of deponent, in the order in which the same were proposed and answered; and that she then and there, at the place where the same was taken, subscribed the same by affixing her mark thereto in my presence; and I furthermore certify, that I am not of counsel or attorney for either of the parties to this suit, or interested in the event of this cause; and that said deponent, Emilie Migueron, lives more than one hundred miles from Springfield, the place where said circuit court (in which this cause is pending) is held. All of which is hereby certified under my hand and seal, this 29th day of November, 1854.

EDW'D W. SHANDS, [SEAL.]
Commissioner.

7th. Deposition of Robert Forsyth, which is as follows:

The deposition of Robert Forsyth, taken before me, Edward W. Shands, commissioner appointed for that purpose, on the 29th day of November, A. D. 1854, at my office in the city and county of St. Louis, State of Missouri, to be read in evidence in a certain cause depending in the circuit court of the United States for the district of Illinois, holden at Springfield, wherein Adolphus Papin, Henry Papin, and Mary Atchison are plaintiffs, and Alexander Cooper is defendant, at the instance of said plaintiffs. The said Robert Forsyth being first carefully examined, cautioned, and sworn, to tell the whole truth, doth depose and say, in answer to interrogatories to him propounded, as per commission and interrogatories hereto annexed:

Interrogatory 1st. Are you acquainted with the parties to this suit; if yea, how long have you known them respectively?

Answer. I have seen defendant, but am not personally acquainted with him. I am acquainted with plaintiffs, and have known them (severally) from infancy.

Int. 2nd. What is your age, residence, and occupation?

Answer. I was forty-six years old the 18th day of July last. I reside about four miles and a half from St. Louis city; and my occupation is that of a farmer.

Int. 3rd. What was your place of nativity?

Answer. I was born in Peoria, Illinois.

Int. 4th. If you state that you was born in the village of Peoria, state how long you resided there, and when did you leave said village, and under what circumstances.

Answer. I resided there four or five years. I left there when I was between four and five years old, in the year 1812, (I believe); I left there at the time the village was destroyed and deserted by the inhabitants. I left with my father, Thomas Forsyth.

Interrogatory 10th. Was you acquainted with Antoine Deschamps and his wife? If yea, state when and where you were acquainted with them; what was the name of the wife of said Antoine Deschamps?

Answer. I was acquainted with Antoine Deschamps and his reputed

wife. When I knew Deschamp's wife she was the wife of Felix Fontaine. Deschamps and his wife were separated before I knew them.

The first time I recollect of seeing Deschamps was in St. Louis city in the year 1817 or 1818. The last time I saw him was at the mouth of the Mackanaw creek, Illinois river, in the spring of the year 1824. I recollect of seeing Mrs. Fontaine (Deschamps' reputed wife) at Peoria, Ills. She resided near my father's house, and used to sew for my mother, and was a good deal about our house. At the time I first knew her she was the wife of Felix Fontaine, and remained as such until her death. She was known in Peoria by her maiden name, which was Josette Cesereau, or sometimes Madam Shorette.

Int. 11th. Was or was not said wife of Antoine Deschamps married to some other person; if so, to whom, when, and where did they live after such marriage, and are they or not now living?

Answer. She was married to Felix Fontaine after her separation from Deschamps. I cannot state when she was married to Felix Fontaine. When I first knew her she was living with Fontaine as his wife at Peoria. Fontaine and his wife moved from Peoria to St. Louis; they and her daughter Emilie (now the wife of Louis Solomon Migueron) all came down from Peoria to St. Louis in the same boat with my father's family. They resided at St. Louis after their removal from Peoria. They are both dead.

Int. 12th. Was or not you acquainted with *Festus* Fontaine; if so, when and where were you acquainted with him, and where did he reside, and who was his wife?

Answer. I was acquainted with Felix Fontaine. I was first acquainted with him at Peoria, or rather knew him there; he was a kind of rough carpenter, and worked for my father. I afterwards knew him at St. Louis. He first resided in Peoria, and afterwards in St. Louis. His first wife was Josette Cesereau, sometimes called Madam Shorette. Josette Cesereau died about 1827 in St. Louis; Felix Fontaine then married a Miss Lemone, in St. Louis.

Int. 13th. If you state that you was acquainted with the family of Antoine Deschamps, state how many children he had, their names; and if daughters, to whom married, and when; and whether or not now living, and where.

Answer. I only know of one child in the family of Josette Cesereau. She had one daughter named Emilie; she (Emilie) married Louis Solomon Migueron. To the best of my knowledge she married Migueron about the year 1816 or 1817. Migueron and his wife are now living in Bon Homme township, St. Louis county, some eighteen miles southwest of St. Louis city.

Int. 14th. Were you or not acquainted with Theodore Papin? If yea, state whether he is now living or otherwise. If deceased, state when and where, and also state whether he left any widow and children; if so, the names of such widow and children, and whether the said children are now living; and whether, if any such children were

daughters or not, she or they were ever married; and if so, to whom, and whether the husbands of such daughter or daughters are now living.

Answer. I was intimately acquainted with Theodore Papin; he is now dead. He died in St. Louis city sometime in the month of July, 1851; I was one of the pall-bearers at his funeral. He left no widow; his wife died about the year 1833. He left three children, named Mary, Adolphe, and Henry, all of whom are now living. One of the children, Mary, was a daughter; she married George Atchison, jr. Said Atchison is dead. He died in the latter part of the year 1850, or first of the year 1851.

Interrogatory 15th. Did said Theodore Papin ever have any legitimate children other than those mentioned in the answer to the last preceding interrogatory; if so, their names?

Answer. He had no other legitimate children other than I have mentioned.

Interrogatory 16th. What are the ages of said children of Theodore Papin?

Answer. Mary Atchison is about thirty-one or two years old; probably a little more. Adolphe is about twenty-eight or nine years old—not younger than twenty-seven. Henry is about twenty-five or six years old—not younger than twenty-five.

Interrog. 17th. Do you know any other matter or thing of benefit to either party to this suit; if so, state fully?

Answer. I was intimately acquainted with Theodore Papin. I was present at his marriage, very well acquainted with his family, and was one of his pall-bearers at his funeral. I know of nothing further of benefit to either party to this suit. ROBERT FORSYTH.

I, Edward W. Shands, of the city and county of St. Louis, State Missouri, in virtue of the power in me vested by the annexed commission, dedimus potestatem, do certify that in pursuance of the said commission to me addressed, I caused the above named Robert Forsyth, deponent, to come before me at the time and place in the caption stated, the same being a time and place appointed by me for the purpose of taking his deposition. That the said deponent was then and there by me carefully examined, cautioned and sworn to testify the whole truth; and thereupon I proceeded to examine him upon the annexed interrogatories, reducing said interrogatories and the answers of deponent thereto to writing, in presence of said deponent, in the order in which the same were proposed and answered, and that he then and there subscribed the same in my presence. And I furthermore certify that I am not a counsel or attorney for either of the parties to this suit, and am not interested in the event of the cause. All of which is hereby certified under my hand and seal.

EDW'D W. SHANDS, [SEAL.]
Commissioner.

Endorsed: Opened and filed, December 19th, 1854, by Mr. Merriman.
WM. POPE, *Clerk.*

8th.—*Deed from Solomon Migueron and wife to Theodore Papin, which is as follows:*

This deed, made this fifth day of June, eighteen hundred and fifty-one, by and between Solomon Migueron and Amelia his wife, (who is the daughter and sole heir of Josette Carsereau, alias Marie Josephine Ciercereau, formerly wife of Felix Fontaine,) of the township of Bon Homme, county of St. Louis and State of Missouri, parties of the first part, and Theodore Papin, of the city of St. Louis, in said State, party of the second part, witnesseth: That the parties of the first part, in consideration of the sum of eighty dollars to them paid by the party of the second part, the receipt whereof is hereby acknowledged, do hereby bargain, sell, convey and quit claim unto the said party of the second part, a lot or parcel of ground situate in the city and county of Peoria and State of Illinois, and containing eighty feet in front, same measure in depth, and bounded eastwardly by a street separating it from Lake Peoria, northwardly by a lot now or formerly claimed by the heirs of La Boushier, westwardly by a street, and southwardly by a lot on which said Felix Fontaine formerly lived. The lot hereby conveyed being the same that was proved, under the act of Congress entitled "An act for the relief of the inhabitants of the village of Peoria in the State of Illinois," approved May 15th, 1820, and claimed by said Fontaine in right of his wife Josette Carsereau above named, said claim being No. 62 in the report of Edward Coles, register of the land office at Edwardsville, to the Secretary of the Treasury of the United States, dated November 10th, 1830. The said claim, with others, having been confirmed by act of Congress passed March 3d, 1823. To have and to hold the said granted premises, unto him, the said party of the second part, and to his heirs and assigns forever; but without any warranty of the title, on the part of the parties of the first part, and without any recourse on them, in case the title should fail.

In witness whereof the parties of the first part have hereto set their hands and seals, the day and year first above written.

L.S. SOLOMON MIGUERON. [SEAL.]

her
AMELIA ⋈ MIGUERON. [SEAL.]
mark.

Witness: J. THORNBURGH.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this seventh day of June, A. D. eighteen hundred and fifty-one, before the undersigned, clerk of the St. Louis county court, came Louis Solomon Migueron and Amelia Migueron his wife, who are personally known to me to be the same persons whose names are signed to the preceding instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed,

for the purposes therein mentioned. The said Amelia Migueron, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same freely and without compulsion or undue influence of her said husband. And I further certify that the foregoing deed is executed and acknowledged in due form of law, according to the statutes of the State of Missouri.

In testimony whereof, I hereto set my hand and affix the [L. S.] seal of said court, at office in St. Louis, the date last aforesaid. LOUIS F. LACY, *Clerk.*

9th.—*Deed from Felix Fontaine to Peter Menard, which is as follows:*

Know all men by these presents, that I, Felix Fontaine, of the city and county of St. Louis, in the State of Missouri, for and in consideration of five hundred dollars, good and lawful money of the United States to me in hand well and truly paid by Peter Menard, jun'r, the receipt whereof is hereby acknowledged, have bargained, sold, released, conveyed and confirmed, and do, by these presents, bargain, sell, release, convey and confirm, unto the said Peter Menard, jun'r, and to his heirs and assigns forever, all my right and title in and to the following described lots and out-lots in and adjoining the town or village of Peoria, in the State of Illinois—that is to say: Lot numbered forty-one (41), in said town of Peoria, containing eighty feet front by three hundred feet in depth, French measure, bounded eastwardly by a street separating it from the Lake Peoria, northwardly by a lot formerly occupied by Antoine Dechamp, and now claimed by the said Fontaine, and on the south and west by a street. Also, lot number forty-two (42), in said town of Peoria, eighty feet front by three hundred feet in depth, French measure, bounded eastwardly by a street separating it from Lake Peoria, northwardly by a lot claimed by the heirs of L. Boushier, westwardly by a street, and southwardly by a lot on which said Fontaine formerly lived. Also, survey number forty-three (43), being an out-lot adjoining said town of Peoria, containing about nine arpens of land, situate on the southwest of said town, bounded southwestwardly by the out-lot of Antoine Lapance, and on the north by the out-lot of Francois Racine, sen'r. Also, survey number forty-four (44), being an out-lot containing about two and a half arpens of land, situate about one-fourth of a mile to the west of said town of Peoria:

To have and to hold the said town lots and out-lots, with all and singular the privileges and appurtenances thereto belonging or in anywise appertaining, unto him, the said Peter Menard, junior, and to his heirs and assigns forever, hereby warranting and defending the same against the claims of myself, my heirs, executors, and administrators.

In testimony whereof, I have hereunto set my hand and affixed my

seal, at St. Louis, in the State of Missouri aforesaid, this twenty-ninth day of October, in the year one thousand eight hundred and thirty-five

FELIX his ✕ mark. FONTAINE, [L. S.]

ANNE her ✕ mark. FONTAINE, [L. S.]

Signed, sealed, and delivered in presence of—
S. DARR,
JOHN his ✕ mark. LA TRESSE,
P. WALSH.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this 29th day of October, in the year of our Lord eighteen hundred and thirty-five, before me, a justice of the peace within and for the county aforesaid, personally came Felix Fontaine, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same; also came Ann, the wife of said Felix, proved by S. Darr and John La Tresse, examined before me on oath, to be the person whose name is subscribed to the foregoing instrument as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned;—she, the said Ann, being by me first made acquainted with the contents thereof, and examined separate and apart from her husband, whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed, and relinquished her dower in the said lands and tenements therein mentioned, voluntarily, freely, and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid.

P. WALSH,
Justice of the Peace.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Henry Chouteau, clerk of the county court within and for the county of St. Louis, in the State of Missouri, do hereby certify, that Patrick Walsh, whose name is subscribed to the annexed certificate of acknowledgment subjoined to a deed executed by Felix Fontaine and Ann Fontaine, was, at the time of signing the same, and now is, a justice of the peace within and for the county aforesaid, duly commis-

sioned and qualified, and acting as such; and that full faith and credit are due to his acts as such.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at the city of St. Louis, this twenty-fourth [L. S.] day of November, in the year of our Lord eighteen hundred and thirty-five.

HENRY CHOUTEAU, *Clerk.*

10th.—*Deed from Peter Menard to the Plaintiffs, which is as follows:*

This indenture, made this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and fifty-three, between Peter Menard, of the first part, and Adolph Papin, Henry Papin and Mary Atchison, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents remise, release, and quit-claim unto the said parties of the second part, their heirs and assigns, a certain tract or parcel of land, known and described as lot in the village of Peoria and State of Illinois, covered by claim No. 2, confirmed to Felix Fontaine, in right of his wife, Josette Carsereau dit Fontaine, by an act of Congress approved the third March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois;" together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining: to have and to hold the said premises as above described, with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

PETER MENARD. [SEAL.]

STATE OF ILLINOIS, *Peoria county, ss:*

This day personally appeared before the undersigned, a justice of the peace in and for said county, Peter Menard, who is personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged that he had executed the same, for the uses and purposes therein expressed.

Witness my hand and seal, at the county aforesaid, this twenty-ninth day of January, A. D. 1853.

THOMAS BRYANT, *J. P.* [SEAL.]

To the introduction of this deed defendant objected, because it did not appear that the person taking the acknowledgment was a justice of the peace.

There being neither an official certificate of his character, nor any oral or other proof except his own certificate that he was a justice of the peace, but it appearing that the acknowledgment was made before a justice of the peace of Peoria county, and that the land was in that county, the court overruled said objection, and said deed was given in evidence to the jury.

11th.—*An agreement of facts, signed by the parties, which is as follows:*

ADOLPH PAPIN et al. ads. ALEXANDER COOPER. } In Ejectment.

It is agreed, that at the commencement of the above suit, said Alexander Cooper was in possession of so much of the southwesterly half of lot seven, in block thirty-four of Bigelow and Underhill's survey, as the tenant of Charles Ballance, as is covered by land described in the declaration, and claiming no other right thereto. He was at that time occupying on said half lot a large store-house, with stoves, tinware, sheet-iron, and similar articles.

That said half lot is a part of the southeast fractional quarter of section nine, in township eight, north of range eight, east of the fourth principal meridian.

That John L. Bogardus was in possession of a portion of said fractional quarter section, claiming the whole previously to the year 1832. That one Waters was also in possession of a part of said fraction quarter section, claiming the whole prior to the year 1832. In January, 1834, said Ballance bought said Waters's claim, and also the claim of one Swinerton, whom he also found in possession, and under said purchase took actual possession of said premises in said month of January. Said actual possession at first consisted of two framed houses, that stood contiguous on lot No. one in block 51, in said Bigelow and Underhill's plat, and a stable and small enclosure for hay, that stood on lot 4, in block 51 of said survey; but in the spring of 1835, said Ballance enclosed with a substantial fence lots 1, 2, 3 and 4, in said addition, and at the same time built a kitchen adjoining said houses. Also, at the same time, enclosed a small field appurtenant to said house, but across the public highway, which on said survey is called Water street. Said field included the ground in controversy in this suit.

Said Ballance occupied said premises, by actual residence in said houses with his family, and cultivated said field as an appurtenance thereto, from the dates aforesaid until the month of May, 1844. Whereupon, and at that time, said half lot was built upon by one who had taken from said Ballance a lease for a term of years; and the same has ever since been occupied, either as a shop or store-house, by persons who held under said Ballance.

Agreed to for this trial, Jan'y 15th, 1854.

WILLIAMS & MANNING,
For Pl'fs.

C. BALLANCE.

Endorsed: Filed Jan'y 15th, 1855.

WM. POPE, *Clerk.*

Defendant gave in evidence a patent from the United States to John L. Bogardus, which is as follows:

Certificate No. 13,258.

The United States of America, to all to whom these presents shall come, greeting:

Whereas John L. Bogardus, of New York county, New York, has deposited in the General Land Office of the United States a certificate of the register of land office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardus, according to the provisions of the act of Congress of the 24th of April, 1820, entitled an act making further provision for the sale of the public lands for the southeast fractional quarter of section nine, in township eight, north of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing twenty-three acres and ninety-three hundredths of an acre, according to the official plat of the survey of the lands returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said John L. Bogardus: Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John L. Bogardus, and to his heirs, the said tract above described; to have and to hold the same, together with all and singular the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said John L. Bogardus, and to his heirs and assigns forever, subject, however, to all the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

[SEAL.] MARTIN VAN BUREN,
By A. VAN BUREN, *P. Sec'y.*

H. M. GARLAND,
Recorder of the General Land Office.

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By the President.

It was then admitted by plaintiffs that whatever title the facts aforesaid and said patent to Bogardus would confer, was vested in said de-

fendant Ballance, and was still vested in him. And the above was all the evidence given in the case.

Whereupon defendant asked the court to instruct the jury that the title exhibited by the defendant is superior and paramount at law to the title exhibited by the plaintiff.

2d. That the possession of defendant, under the title shown by him for seven years, before the commencement of this suit, was sufficient under the laws of Illinois to bar the action of plaintiff.

3d. That the claim of plaintiff being founded upon the assumption of a prior possession in said Fontaine, or Josette Carcereau, or both, that that possession was sufficient to maintain an action of ejectment against any intruder; and, therefore, if they believe from the evidence that defendant, and those under whom he claims, had been in possession of ground in the manner stated in the stipulation more than twenty years before the commencement of this action, plaintiff cannot recover.

Which instructions the court refused to give, but instructed the jury that the land included in said French claim, No. 42, was not granted or conveyed by the said Bogardus patent, and consequently that being the only title the defendant had, there is no such title as under the statute of limitations protects the possession of the defendant in this case.

That if the defendant, or those under whom he claims, entered under said patent of Bogardus, then the defendant could not set up such possession as adverse under the statutes of limitations against the plaintiff under the facts in this case.

To which decisions, opinions, and rulings of said court, said defendant then and there excepted, and prayed that this his bill of exceptions be sealed, signed, and made part of the record, which is done, &c.

THOMAS DRUMMOND. [SEAL.]

JULY 20th, 1855.

Endorsed: Filed July 20th, 1855.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on 23rd day of July, A. D. 1855, said defendant, by his attorney, filed in open court, with the clerk thereof, an appeal bond, in the words and figures following, to wit:

In the Circuit Court of the United States for the northern district of Illinois, of the July Term, A. D. 1855.

ADOLPH PAPIN, HENRY PAPIN, MARY ATCHISON, vs. C. BALLANCE. } In Error.

Know all men by these presents, that I, Charles Ballance, am held and firmly bound unto the above-named Adolph Papin, Henry Papin, and Mary Atchison, in the sum of ($2,000) two thousand dollars, to

be paid to the said Adolph Papin, Henry Papin, and Mary Atchison, their executors or administrators, to which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this 21st day of July, 1855.

Whereas, I, the said Charles Ballance, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the United States circuit court of the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if I, the said Charles Ballance, shall prosecute my said writ of error with effect, and answer all damages and costs, if I shall fail to make good my plea, then this obligation shall be void; but otherwise the same shall remain in full force and virtue.

C. BALLANCE. [SEAL.]

We agree that Charles Ballance, his appeal, in the within cause, by giving his own personal bond, without further security.

MANNING & MERRIMAN,
Atty's for Plaintiffs.

Endorsed: Approved.

THOMAS DRUMMOND.

Also endorsed: Filed July 23d, 1855.

WM. H. BRADLEY, *Clerk.*

And on the next day, to wit, the 24th day of July, A. D. 1855, the said defendant, by his attorney, filed in said court, with the clerk thereof, his writ of error in said cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America, to the judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between Adolph Papin, Henry Papin, and Mary Atchison, and against Charles Ballance, a manifest error hath happened, to the great damage of the said Charles Ballance, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the

said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, chief justice of the Su-
[SEAL.] preme Court of the United States, this 23d day of July, A. D. 1855, and of our independence the 80th year.

WILLIAM H. BRADLEY, *Clerk.*

Endorsed: Filed July 24th, 1855.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify that the foregoing transcript contains a true, full, and correct copy from the record, of all the proceedings which have been had in said circuit court for the district of Illinois, and also for said northern district of Illinois, in the aforesaid cause, in ejectment, of Adolph Papin, Henry Papin, and Mary Atchison, against Charles Ballance.

In testimony whereof, I have hereunto set my hand and affixed
[SEAL.] the seal of said court, at my office in Chicago, in said district, this 18th day of January, A. D. 1856.

WILLIAM H. BRADLEY, *Clerk.*

$14 $\frac{60}{100}$ for this record paid by C. Ballance.

W. H. BRADLEY, *Cl'k.*

Said defendant, Ballance, in proper person, comes and says, that in the record and proceedings aforesaid, as also in said judgment, there is manifest error in this, to wit:

1st. Said circuit court erred in permitting said printed volume to be read to the jury, with proof of its authenticity.

2nd. Said court erred in permitting said deed from Peter Menard to be read without further authentication.

3rd. Said court erred in refusing to instruct the jury as moved by defendant.

4th. The court erred in giving the instructions which it did give to the jury.

5th. Said judgment ought to have been for said defendant, and not for said plaintiffs. And for other errors in said record appearing, said defendant prays the court here to set aside, disannul, and wholly vacate said judgment.

C. BALLANCE.